

SECOND REGULAR SESSION

# SENATE BILL NO. 810

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Read 1st time January 21, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4400S.011

## AN ACT

To repeal sections 320.106, 320.111, 320.131, and 320.136, RSMo, and to enact in lieu thereof four new sections relating to fireworks.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 320.106, 320.111, 320.131, and 320.136, RSMo, are  
2 repealed and four new sections enacted in lieu thereof, to be known as sections  
3 320.106, 320.111, 320.131, and 320.136, to read as follows:

320.106. As used in sections 320.106 to 320.161, unless clearly indicated  
2 otherwise, the following terms mean:

3 (1) "American Pyrotechnics Association (APA), Standard 87-1", or  
4 subsequent standard which may amend or supersede this standard for  
5 manufacturers, importers and distributors of fireworks;

6 (2) "Chemical composition", all pyrotechnic and explosive composition  
7 contained in fireworks devices as defined in American Pyrotechnics Association  
8 (APA), Standard 87-1;

9 (3) "Consumer fireworks", explosive devices designed primarily to produce  
10 visible or audible effects by combustion and includes aerial devices and ground  
11 devices, all of which are classified as fireworks, [UNO336, 1.4G by regulation of]  
12 **by** the United States Department of Transportation, [as amended from time to  
13 time, and which were formerly classified as class C common fireworks by  
14 regulation of the United States Department of Transportation] **at 49 CFR**  
15 **172.101 as UNO336;**

16 (4) "Discharge site", the area immediately surrounding the fireworks  
17 mortars used for an outdoor fireworks display;

18 (5) "Dispenser", a device designed for the measurement and delivery of

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 liquids as fuel;

20 (6) "Display fireworks", explosive devices designed primarily to produce  
21 visible or audible effects by combustion, deflagration or detonation. This term  
22 includes devices containing more than two grains (130 mg) of explosive  
23 composition intended for public display. These devices are classified as  
24 fireworks[, UNO335, 1.3G by regulation of the United States Department of  
25 Transportation, as amended from time to time, and which were formerly classified  
26 as class B display fireworks by regulation of the United States Department of  
27 Transportation] **by the United States Department of Transportation at 49**  
28 **CFR 172.101 as UNO333, UNO334, or UNO335;**

29 (7) "Display site", the immediate area where a fireworks display is  
30 conducted, including the discharge site, the fallout area, and the required  
31 separation distance from mortars to spectator viewing areas, but not spectator  
32 viewing areas or vehicle parking areas;

33 (8) "Distributor", any person engaged in the business of selling fireworks  
34 to wholesalers, jobbers, seasonal retailers, other persons, or governmental bodies  
35 that possess the necessary permits as specified in sections 320.106 to 320.161,  
36 including any person that imports any fireworks of any kind in any manner into  
37 the state of Missouri;

38 (9) "Fireworks", any composition or device for producing a visible, audible,  
39 or both visible and audible effect by combustion, deflagration, or detonation and  
40 that meets the definition of consumer, proximate, or display fireworks as set forth  
41 by 49 CFR Part 171 to end, United States Department of Transportation  
42 hazardous materials regulations[, and American Pyrotechnics Association 87-1  
43 standards];

44 (10) "Fireworks season", the period beginning on the twentieth day of  
45 June and continuing through the tenth day of July of the same year and the  
46 period beginning on the twentieth day of December and continuing through the  
47 second day of January of the next year, which shall be the only periods of time  
48 that seasonal retailers may be permitted to sell consumer fireworks;

49 (11) "Jobber", any person engaged in the business of making sales of  
50 consumer fireworks at wholesale or retail within the state of Missouri to  
51 nonlicensed buyers for use and distribution outside the state of Missouri during  
52 a calendar year from the first day of January through the thirty-first day of  
53 December;

54 (12) "Licensed operator", any person who supervises, manages, or directs

55 the discharge of outdoor display fireworks, either by manual or electrical means;  
56 who has met additional requirements established by promulgated rule and has  
57 successfully completed a display fireworks training course recognized and  
58 approved by the state fire marshal;

59 (13) "Manufacturer", any person engaged in the making, manufacture,  
60 assembly or construction of fireworks of any kind within the state of Missouri;

61 (14) "NFPA", National Fire Protection Association, an international codes  
62 and standards organization;

63 (15) "Permanent structure", buildings and structures with permanent  
64 foundations other than tents, mobile homes, and trailers;

65 (16) "Permit", the written authority of the state fire marshal issued  
66 pursuant to sections 320.106 to 320.161 to sell, possess, manufacture, discharge,  
67 or distribute fireworks;

68 (17) "Person", any corporation, association, partnership or individual or  
69 group thereof;

70 (18) "Proximate fireworks", a chemical mixture used in the entertainment  
71 industry to produce visible or audible effects by combustion, deflagration, or  
72 detonation, as defined [by the most current edition of the American Pyrotechnics  
73 Association (APA), Standard 87-1, section 3.8, specific requirements for theatrical  
74 pyrotechnics] **by the United States Department of Transportation at 49**  
75 **CFR 172.101 as UNO431 or UNO432;**

76 (19) "Pyrotechnic operator" or "special effects operator", an individual who  
77 has responsibility for pyrotechnic safety and who controls, initiates, or otherwise  
78 creates special effects for proximate fireworks and who has met additional  
79 requirements established by promulgated rules and has successfully completed  
80 a proximate fireworks training course recognized and approved by the state fire  
81 marshal;

82 (20) "Sale", an exchange of articles of fireworks for money, including  
83 barter, exchange, gift or offer thereof, and each such transaction made by any  
84 person, whether as a principal proprietor, salesman, agent, association,  
85 copartnership or one or more individuals;

86 (21) "Seasonal retailer", any person within the state of Missouri engaged  
87 in the business of making sales of consumer fireworks in Missouri only during a  
88 fireworks season as defined by subdivision (10) of this section;

89 (22) "Wholesaler", any person engaged in the business of making sales of  
90 consumer fireworks to any other person engaged in the business of making sales

91 of consumer fireworks at retail within the state of Missouri.

320.111. 1. It is unlawful for any person to manufacture, sell, offer for  
2 sale, ship or cause to be shipped into or within the state of Missouri except as  
3 herein provided any item of fireworks, without first having secured the required  
4 applicable permit as a manufacturer, distributor, wholesaler, jobber or seasonal  
5 retailer from the state fire marshal and applicable federal permit or  
6 license. Possession of said permit is a condition precedent to manufacturing,  
7 selling or offering for sale, shipping or causing to be shipped any fireworks into  
8 the state of Missouri, except as herein provided. This provision applies to  
9 nonresidents as well as residents of the state of Missouri.

10 2. The state fire marshal has the authority and is authorized and directed  
11 to issue permits [for the sale of fireworks] **to carry out the provisions of this**  
12 **section.** No permit shall be issued to a person under the age of eighteen years,  
13 **or to any person who has been found guilty of or pleaded guilty to a**  
14 **felony, or to any person failing to provide the division of fire safety**  
15 **with proof of liability insurance in an amount set by rule.** All permits  
16 except for seasonal retailers shall be for the calendar year or any fraction thereof  
17 and shall expire on the thirty-first day of December of each year.

18 3. Permits issued must be displayed in the permit holder's place of  
19 business. No permit provided for herein shall be transferable nor shall a person  
20 operate under a permit issued to another person or under a permit issued for  
21 another location. Manufacturer, wholesaler, jobber, and distributor permit  
22 holders operating out of multiple locations shall obtain a permit for each location.

23 4. Failure to make application for a permit by May thirty-first of the  
24 calendar year may result in the fire marshal's refusal to issue a license to the  
25 licensee or applicant for such calendar year.

26 5. Any false statement or declaration made on a permit application may  
27 result in the state fire marshal's refusal to issue such permit to the requesting  
28 person for a period of time not to exceed three years.

29 6. The state fire marshal is authorized and directed to charge the  
30 following fees for permits:

31 (1) Manufacturer, a fee of seven hundred seventy-five dollars per calendar  
32 year;

33 (2) Distributor, a fee of seven hundred seventy-five dollars per calendar  
34 year;

35 (3) Wholesaler, a fee of two hundred seventy-five dollars per calendar

36 year;

37 (4) Jobber, a fee of five hundred twenty-five dollars per calendar year per  
38 sales location;

39 (5) Seasonal retailer, a fee of fifty dollars per calendar year per sales  
40 location;

41 (6) Display fireworks, a fee of one hundred dollars per calendar year per  
42 location;

43 (7) Proximate fireworks display permit, a fee of one hundred dollars per  
44 calendar year per location;

45 (8) Licensed operator, a fee of one hundred dollars for a three-year license;

46 (9) Pyrotechnic operator, a fee of one hundred dollars for a three-year  
47 license.

48 7. A holder of a manufacturer's permit shall not be required to have any  
49 additional permits in order to sell to distributors, wholesalers, jobbers or seasonal  
50 retailers, or to sell display, or proximate fireworks.

51 8. A holder of a distributor's permit shall not be required to have any  
52 additional permits in order to sell to wholesalers, jobbers, seasonal retailers or  
53 to sell display, or proximate fireworks.

54 9. A holder of a jobber's permit shall not be required to have any  
55 additional permit in order to sell consumer fireworks at retail during the  
56 fireworks season from such jobber's permanent structure.

57 10. All fees collected for permits issued pursuant to this section shall be  
58 deposited to the credit of the fire education fund created pursuant to section  
59 320.094. Any person engaged in more than one permit classification shall pay  
60 one permit fee based upon the permit classification yielding the highest amount  
61 of revenue.

62 11. The state fire marshal is charged with the enforcement of the  
63 provisions of sections 320.106 to 320.161 and may call upon any state, county or  
64 city peace officer for assistance in the enforcement of the provisions of sections  
65 320.106 to 320.161. The state fire marshal may promulgate rules pursuant to the  
66 requirements of this section and chapter 536, RSMo, necessary to carry out his  
67 or her responsibilities under this act including rules requiring training,  
68 examination, and licensing of licensed operators and pyrotechnic operators  
69 engaging in or responsible for the handling and use of display and proximate  
70 fireworks. The test shall incorporate the rules of the state fire marshal, which  
71 shall be based upon nationally recognized standards.

72 No rule or portion of a rule promulgated pursuant to this chapter shall become  
73 effective unless it has been promulgated pursuant to the provisions of chapter  
74 536, RSMo.

75 12. The state fire marshal, upon notification by the department of  
76 revenue, may withhold permits from applicants upon evidence that all state sales  
77 taxes for the preceding year or years have not been paid; except, this subsection  
78 shall not apply if an applicant is pursuing any proper remedy at law challenging  
79 the amount, collection, or assessment of any sales tax.

80 13. A holder of a distributor, wholesaler, or jobber's permit shall be  
81 required to operate out of a permanent structure in compliance with all applicable  
82 building and fire regulations in the city or county in which said person is  
83 operating a fireworks business. Seasonal retail permit locations shall be in  
84 compliance with all applicable building and fire regulations. The applicant may  
85 be subject to a fire safety inspection by the state fire marshal based upon  
86 promulgated rules and regulations adopted by the state fire marshal.

87 14. It is unlawful for any manufacturer, distributor, wholesaler, or jobber  
88 to sell consumer fireworks to a seasonal retailer who has not acquired an  
89 appropriate permit from the state fire marshal for the current permit period. A  
90 seasonal retailer shall acquire and present the appropriate permit from the state  
91 fire marshal before any manufacturer, distributor, wholesaler or jobber is allowed  
92 to sell consumer fireworks to such seasonal retailer, provided that such seasonal  
93 retailer is purchasing the consumer fireworks for resale in this state. **The state  
94 fire marshal or state fire marshal's deputies may examine any records  
95 of fireworks sales to assure compliance with this section.**

96 15. The state fire marshal and the marshal's deputies may conduct  
97 inspections of any premises and all portions of buildings where fireworks are  
98 stored, manufactured, kept or being offered for sale. All persons selling, offering  
99 for sale, barter, gift, exchange, or offer thereof any fireworks shall cooperate fully  
100 with the state fire marshal and the marshal's deputies during any such  
101 inspection. This inspection shall be performed during normal business hours.

102 16. In addition to any other penalty, any person who manufactures, sells,  
103 offers for sale, ships or causes to be shipped into or caused to be shipped into the  
104 state of Missouri, for use in Missouri, any items of fireworks without first having  
105 the required applicable permit shall be assessed a civil penalty of up to a one  
106 thousand dollar fine for each day of operation up to a maximum of ten thousand  
107 dollars.

320.131. 1. It is unlawful for any person to possess, sell or use within the  
2 state of Missouri, or ship into the state of Missouri, except as provided in section  
3 320.126, any pyrotechnics commonly known as "fireworks" and defined as  
4 consumer fireworks in subdivision (3) of section 320.106 other than items now or  
5 hereafter classified as fireworks UNO336, 1.4G by the United States Department  
6 of Transportation that comply with the construction, chemical composition,  
7 labeling and other regulations relative to consumer fireworks regulations  
8 promulgated by the United States Consumer Product Safety Commission and  
9 permitted for use by the general public pursuant to such commission's  
10 regulations.

11 2. No wholesaler, jobber, or seasonal retailer, or any other person shall  
12 sell, offer for sale, store, display, or have in their possession any consumer  
13 fireworks that have not been approved as fireworks UNO336, 1.4G by the United  
14 States Department of Transportation.

15 3. No jobber, wholesaler, manufacturer, or distributor shall sell to  
16 seasonal retailer dealers, or any other person, in this state for the purpose of  
17 resale, or use, in this state, any consumer fireworks which do not have the  
18 numbers and letter "1.4G" printed within an orange, diamond-shaped label  
19 printed on or attached to the fireworks shipping carton.

20 4. This section does not prohibit a manufacturer, distributor or any other  
21 person **possessing the proper permits as specified by state and federal**  
22 **law** from storing, selling, shipping or otherwise transporting display or proximate  
23 fireworks[, defined as fireworks UNO335, 1.3G/UNO431, 1.4G or UNO432, 1.4S  
24 by the United States Department of Transportation, provided they possess the  
25 proper permits as specified by state and federal law].

26 5. Matches, toy pistols, toy canes, toy guns, party poppers, or other  
27 devices in which paper caps containing twenty-five hundredths grains or less of  
28 explosive compound, provided that they are so constructed that the hand cannot  
29 come into contact with the cap when in place for use, and toy pistol paper caps  
30 which contain less than twenty-five hundredths grains of explosive mixture shall  
31 be permitted for sale and use at all times and shall not be regulated by the  
32 provisions of sections 320.106 to 320.161.

320.136. Ground salutes commonly known as "cherry bombs", "M-80's",  
2 "M-100's", "M-1000's", and any other tubular salutes or any items described as  
3 prohibited chemical components or forbidden devices as listed in the American  
4 Pyrotechnics Association Standard 87-1 or which exceed the [federal] limits set

5 for **consumer** fireworks [UNO336, 1.4G formerly known as class C common  
6 fireworks, display fireworks UNO335, 1.3F, and proximate fireworks UNO431,  
7 1.4F/UNO432, 1.4S by the United States Department of Transportation], **display**  
8 **fireworks or proximate fireworks** for explosive composition are expressly  
9 prohibited from shipment into, manufacture, possession, sale, or use within the  
10 state of Missouri for consumer use. Possession, sale, manufacture, or transport  
11 of this type of illegal explosive shall be punished as provided by the provisions  
12 of section 571.020, RSMo.

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Bill

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